IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO. 1951 OF 2007

Maharashtra Rajya Rashtriya Kamgar Sangh,)
Mazdoor Manzil, G.D. Ambedkar Marg,)
Parel, Mumbai-400 012.)..Petitioner

versus

1. Kamgar Suraksha Sangh,)
37-B, Sagar Bonanza Shopping Centre,)
J.V. Road, Ghatkopar (West),)
Mumbai-400 086)

2. Shangrila Food Products Ltd.,)
L.B.S. Road, Bhandup (West),)
Mumbai-400 078)..Respondents

Mr. C.U. Singh, Senior Advocate, with Mr. Niranjan Mogre, instructed by M/s. Haresh Mehta & Co., for the petitioner.

Mr. Arshad Shaikh for respondent No.1.

Ms. Anjali Purav for respondent No.2.

CORAM: **SWATANTER KUMAR, C.J.** &
DR. D.Y. CHANDRACHUD, J.

Judgment reserved on : September 12, 2007
Judgment delivered on: October 11, 2007

JUDGMENT (Per Swatanter Kumar, C.J.):

Vide order dated 23rd July, 2007, Member, Industrial Court, Maharashtra, Mumbai, decided Application (MRTU) No. 26 of 2003 filed by Kamgar Suraksha Sangh, holding that the applicants were

entitled to the relief prayed for and that the applicant union was a recognised union of Sangrila Food Products Limited in place of Maharashtra Rajya Rashtriya Kamgar Sangh. The Registrar, Industrial Court, Mumbai, was directed to issue certificate in terms thereof as well as publish the order in accordance with the provisions of Section 17 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, hereinafter referred to as “the Act”, and the Rules framed thereunder.

2. The petitioner herein aggrieved from the said order has filed the present writ petition under Article 226 of the Constitution of India primarily on the ground that the order passed is erroneous and based on no evidence. Further that the members who were holding common membership have not been excluded which are to the extent of 30 per cent and as such the entire proceedings are vitiated and the impugned order is liable to be quashed. While attacking the order in question, it is also argued that in respect of 146 members of the petitioner union who are stated to have resigned, their resignation was not proved and just two witnesses were examined on the said point.

As the members had already paid the subscription for the entire year, they would be deemed to be members of the Petitioner Union, despite

their alleged resignation. The concept of membership is relatable to the payment of membership fee and tendering of resignation would be inconsequential during that period. Besides the above grounds, even a contention is raised that the directions of the High Court issued in Writ Petition No. 2687 of 2006 have not been properly applied by the Tribunal.

2. Facts which are necessary at this juncture are that the second respondent in the writ petition is a Company incorporated under the Companies Act, 1956 and is carrying on the business of manufacture and sale of food products. The petitioner is a trade union duly registered under the Trade Unions Act, 1926. It was a duly recognised trade union of respondent No.2. On 14th July, 2000, a three year settlement of the charter of demands was arrived at between the petitioner union and respondent No.2 and the said settlement was accepted by all the workmen who received benefits in furtherance to the said settlement. Another settlement in relation to payment of bonus/exgratia amount for the year 2001-2002 was also effected through the Union on 31st October, 2002. Even thereafter, on 27th October, 2005, a settlement was arrived at by the petitioner union with respondent No.2 for payment of bonus/ex-gratia for the year 2004-

2005 and initially out of 175 eligible workmen, 127 workmen accepted the payment and 48 workmen accepted the same pursuant to the order of this Court dated 27th February, 2006. The majority of the workmen had gone on a spontaneous strike for 44 hours with effect from 30th June, 2006 and only 46 workers owing allegiance to respondent No.1 Union asked the Company in writing to provide the work. The majority of the workmen are from the members of the petitioner union.

3. Despite the above facts, respondent No.1 filed an application on 28th November, 2003, being Application (MRTU) No. 26 of 2003, inter alia, claiming that it has the largest majority of employees in second respondent undertaking and praying to register it as a recognised Union in place of the petitioner. It is averred that one Sunil Kharwal, Advocate who had appeared for the petitioner union in its recognition application, being Application (MRTU) No. 1 of 2000, was named as President of the first respondent Union. This application was opposed by the petitioner on various grounds. An application for interim relief was also filed on 5th May, 2004 by respondent No.1 which was again resisted by the petitioner. Respondent No.1 also filed an application for appointment of an Investigating Officer to verify the membership of the respective Unions. This application was allowed by

the Member, Industrial Court vide order dated 4th February, 2005 and appointed an Investigating Officer to examine the records of the Unions and submit a verification report. The Investigation Officer submitted his report on 4th April, 2005 to which respondent No.1 submitted its comments objecting to the Investigation Officer's report showing 133 workmen as common members and sought for personal verification of the said workmen by the Court. The Industrial Court rejected this application. Thereafter, respondent No.1 examined two witnesses in support of their application. The Industrial Court, vide its order dated 18th October, 2006, allowed the application thereby cancelling the recognition of the petitioner union and granting recognition to the first respondent Union in its place. This order was challenged by the petitioner in Civil Writ Petition No. 2687 of 2006. A Division Bench of this Court vide order dated 20th December, 2006, while setting aside the order of the Industrial Court, issued certain direction which reads as under:-

> "6. Considering however the fact that parties have led evidence, in our opinion, the ends of justice will be met if the matter is remanded back to the Industrial Court to hear oral arguments of the parties afresh and after considering the evidence on record both documentary as well as oral, to give a finding of fact, not based on common membership but as to who amongst the Petitioners and Respondent No.1 enjoys majority support for the relevant period of May to October, 2003. This exercise to be completed within eight weeks from a copy of this order being made available to the learned Industrial Court.
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> 7. Pending the hearing and final disposal of the proceedings before the learned Industrial Court, the company not to enter into settlement with either both Petitioner and or Respondent No.1."

4. In furtherance to the said order, the parties were heard again by the Industrial Court which passed the order challenged in this petition.

5. Reliance on behalf of the petitioner was placed upon the judgment of the Supreme Court in *Automobile Products of India Employees Union* vs. *Association of Engineering Workers, Bombay and others,*[(1990) 2 SCC 444] to contend that the procedure prescribed for determination of majority has to be followed in pith and substance and exclusive membership of the contesting unions continuously over the specified period has to be the basis, while overlapping membership being ignored. In that case, the Supreme Court was concerned with a

case where the Industrial Court had directed secret ballot method for determining the majority with the consent of the parties. The Court held that despite consent of the parties, this method, being opposed to the specific provisions of the Act, could not be accepted and the illegality was incurable. Of course, the overlapping membership was also stated to be impermissible. These established principles of law hardly need any discussion in the facts and circumstances of the present case. In the present case, the Industrial Court had appointed an Investigating Officer on whose report the parties had filed comments, whereafter the Industrial Court had decided the application in favour of respondent No.1 at the first instance. Even for the second time when it passed the impugned order, 146 members of the petitioner union had resigned and had become members of the first respondent Union. To prove these resignations, two witnesses were examined and the effect of the resignations had taken effect during the relevant period. Section 3 (11) of the Act defines “member” as a person who is an ordinary member of a Union and has paid a subscription to the Union of not less than 50 paise per calendar month. The proviso further clarifies that no person shall at any time be deemed to be a member, if his subscription is in arrears. This definition would in no way exclude the effect of the resignations by members of the Union. Payment of subscription and

receipts issued for such purpose are the primary evidence of membership. They should be members for the relevant period but where the members have resigned from the primary membership of the Union of which they were earlier members, it would have its effect depending on the facts and circumstances of the case. In accordance with the provisions of Section 13 of the Act, the recognition of the Union would be liable to be cancelled, after holding an enquiry, if the membership of the Union, for a continuous period of six calendar months, falls below the minimum required under Section 11 of the Act. The expression "resignation" has been explained by the Supreme Court in the case of *Moti Ram* vs. *Param Dev and another,* 1993 (2) SCC 725 in the following words:

> "Resignation means the spontaneous relinquishment of one's own right and in relation to an office; it connotes the act of giving up or relinquishing the office. In the general juristic sense, in order to constitute a complete and operative resignation there must be the intention to give up or relinquish the office and the concomitant act of its relinquishment. The act of relinquishment may take different forms or assume a unilateral or bilateral character, dependent on the nature of the office and the conditions governing it."

After appointing the Investigating Officer, the Industrial Court had come to the conclusion that the members had resigned and resultantly there was loss of requisite majority to the petitioner union. The High Court

had directed the Industrial Court to consider the evidence on record, hear both the parties and then to record a finding not based on common membership but as to who amongst the rival Unions was having the majority. In furtherance to the order of the High Court, the Tribunal, in the impugned order, held as under:

> " In addition to that the applicant Union has also produced the letter written to the Commissioner of Labour by workmen by which charter of demands was submitted. In that letter it is clearly mentioned by the workmen that they are members of the applicant Union. In addition to that the applicant Union has examined two witnesses, who in their deposition stated about the resignation letters submitted by the employees from the membership of non-applicant No.2 Union, as well as, affidavits produced on record by individual workmen. The applicant union has also filed the application for verification of common membership at Exh. U-12 which was objected by non-applicant No.2 Union vide its say at Exh. UA-7 and my Ld. predecessor has disposed of the said application vide order as per Exh. O-7 dt. 26/08/2005. As against this, non-applicant No.2 Union has produced the membership list in Form "J" along with membership subscription receipts. However, there are no signatures of the members of non-applicant No.2 Union on the counter foils of the said membership subscription receipts. Non-applicant No.2 Union has examined two witnesses. Thus, after assessing the evidence of both the parties, it is clear to me that the applicant Union in support of its claim, that its Union has largest membership during the period from May, 2003 to October, 2003, has relied on the resignation letters of the workmen resigned from the membership of non-applicant No.2 Union, the affidavits of the individual workmen and the membership subscription receipts from which it can be seen that there are signatures of individual workmen on the counter foils of subscription receipts towards the payment of the Union subscription fees. On the other hand, except the membership receipts and the

> evidence of two witnesses no other evidence is produced by non-ap0plicant No.2 Union in this matter. When the question was asked to the witness of non-applicant No.2 Union about the signatures on the receipt book of the workmen about membership of his Union, the witness of non-applicant No.2 Union said that there is no practice to take the signature of workmen on the counter foils of the receipts book of non-applicant No.2 Union. According to me, though there is no practice of non-applicant No.2 Union of taking the signatures of the members on the counter foils of the membership subscription receipts but that cannot be called as healthy practice. In my opinion to show that the transaction is completed i.e. The member of the Union has paid the subscription fee, the signature of the member is must on the said receipt or on the reverse side of that subscription receipt towards the payment. Thus applicant union has proved that the applicant Union has issued individual receipts to the members towards becoming the members of the applicant Union on payment of subscription fee and by taking signatures on receipts. Thus, after considering over all evidence on record, I am of the view that the applicant Union has proved that it has majority of the members working with non-applicant No.1 Undertaking during the period from May, 2003 to October, 2003. In view of this, I answer issue No.1 accordingly."

6. The above findings are based upon appreciation of evidence produced by the parties, documentary and/or oral. In exercise of writ jurisdiction, this Court cannot reappreciate the evidence unless and until it was palpably wrong, erroneous or was a case of no evidence. The members had resigned and those resignations have been proved on record. The Industrial Court satisfied itself that respondent No.1 Union was able to prove its majority during the relevant time. It recorded a finding also to the effect that all the relevant records had

been maintained by the Union. The findings are primarily based upon appreciation of evidence which is neither perverse nor illogical. This Court would not interfere with the order of the Industrial Tribunal merely because another view would be possible on the same facts and evidence. No legal infirmity has been brought to our notice in following the prescribed procedure. Nothing has been brought on record to show that members with common membership were considered by the Tribunal as members of a particular Union. The persons who had given resignations from the Petitioner Union have filed affidavits to show their solidarity to respondent No.1 Union and their participation. In these circumstances, we are unable to hold that the procedure for determination of majority has tilted the balance in favour of either party prejudicially. In accordance with the settled norms, the majority was determined by the Tribunal and respondent No.1 has been found to be the Union holding membership of majority workmen. Thus, we see no reason to interfere in the order impugned in the present writ petition.

7. The writ petition is thus dismissed, while leaving the parties to bear their own costs.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.